

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

GERALD D. FIELDS,

Petitioner,

vs.

Civil Action 2:14-cv-1694  
Judge Graham  
Magistrate Judge King

WARDEN, FRANKLIN MEDICAL CENTER,

Respondent.

ORDER

Petitioner, a state prisoner, filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254. *Petition*, ECF 2. On September 25, 2014, the United States Magistrate Judge recommended that the *Petition* be dismissed for failure to state a claim for habeas corpus relief. *Order and Report and Recommendation*, ECF 3. This matter is now before the Court on petitioner's objection to that recommendation. *Objection*, ECF 5. The Court will consider the matter *de novo*. See 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b).

The *Petition* alleges simply, "Violation of the Fourth and Fourteenth Amendments. No substantive law of record filed in this matter." *Id.* at PAGEID# 8. As noted by the Magistrate Judge, the *Petition* contains no factual allegations demonstrating that petitioner is in custody in violation of the Constitution or laws of the United States.

In his objections, petitioner asks that "decision on the Magistrate's report . . . be with[h]eld until Respondent's answer to

the petition, as only the State of Ohio can . . . show the true cause of petitioner's detention." *Objection*, PAGEID# 41. "Without the state (Respondent) showing that invocation of state substantive law, where the jurisdictional issue is thus raised, the burden of proof is upon the Respondent, and put in issue by the answer." *Id.* Petitioner has also submitted what appears to be a copy of a portion of the docket sheet in *State of Ohio vs. Fields*, CR2009-0166 (Ct. Comm. Pl., Muskingum County, OH). *Exhibit A*, attached to *Objection*. Petitioner appears to make specific reference to the entry indicating that an indictment and request for an arrest warrant were issued on August 12, 2009. *Id.* at PAGEID 43.

This Court agrees with the Magistrate Judge that the *Petition*, even liberally construed, alleges no facts whatsoever that would support a claim that petitioner was convicted in violation of the Constitution or laws of the United States. See Rule 2(c) of the Rules Governing Section 2254 Cases in the United States District Courts (A petition must, among other things, "state the facts supporting each ground. . . ."). Simply put, the *Petition* does allege a basis for concluding that petitioner is entitled to relief, nor does it present a "'real possibility of constitutional error.'" *Blackledge v. Allison*, 431 U.S. 63, 75 n. 7 (1977)(quoting Advisory Committee Note to Rule 4, Rules Governing Habeas Corpus Cases).

Petitioner's objection to the *Report and Recommendation* is **DENIED**. The *Report and Recommendation*, ECF 3, is **ADOPTED AND AFFIRMED**. This action is **DISMISSED**.

The Clerk is **DIRECTED** to enter **FINAL JUDGMENT**.

Moreover, the Court **DECLINES** to issue a certificate of appealability.

Date: October 9, 2014

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s/James L. Graham  
James L. Graham  
United States District Judge